STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Dr. Emmanuel G. Paniotte	)	
	)	
vs.	)	
	)	Docket 01-0393
Illinois Bell Telephone Company	)	
	)	
	)	

REPLY BRIEF OF ILLINOIS BELL TELEPHONE COMPANY IN SUPPORT OF VERIFIED MOTION TO DISMISS COMPLAINT

The Complainant, Dr. Emmanuel Paniotte, fails to address the substance of the legal arguments Illinois Bell Telephone Company ("Ameritech Illinois") raises in its motion to dismiss, despite his submission of two responses to the motion.[1] He instead focuses on myriad factual issues – none of which has any bearing on the issues involved in the motion. Because the Commission has no jurisdiction over the claims Dr. Paniotte raises, and because those claims are moot, it should dismiss the Complaint.

ARGUMENT

Ameritech Illinois makes three arguments in its motion to dismiss: 1) the Commission lacks jurisdiction over the Complaint because the claims it asserts are not cognizable here or are inapplicable to Ameritech Illinois; 2) the Commission lacks jurisdiction over the subject matter of the Complaint because it involves maintenance of

"inside wire," a deregulated service; and 3) the claims raised in the Complaint are moot. See Am. Ill. Mot. at 4-8. To the extent that Dr. Paniotte may be arguing that the service at issue is regulated or that his claims are not moot, those arguments do not withstand scrutiny. In addition, the extensive factual discussion in his responses addresses topics beyond the scope of his written Complaint, is irrelevant to the issues raised in the motion to dismiss, and has not been properly verified. Finally, Dr. Paniotte's reference to injunctive relief does not save the case from dismissal.

I. Dr. Paniotte's "Legal" Arguments Lack Merit.

Dr. Paniotte's responses are far from clear; however, it appears that he could be challenging two of the legal bases for Ameritech Illinois' motion to dismiss.[1] First, he may be arguing that the dispute involves repairs to something other than "inside wire" and thus raises claims within the Commission's jurisdiction. See Resp. at 2; Supp. Resp. at 1. Second, he may be arguing that his claims are not moot because he did not receive the sum he demanded to settle the case. See Resp. at 4. Neither argument is compelling.

The motion to dismiss pointed out that the Commission deregulated "inside wire" (more generically known as "customer premises wire") in the 1980's and that the Illinois Administrative Code describes maintenance of inside wiring as a nonregulated activity. See Am. Ill. Mot. at 6 (discussing Commission "inside wire" decisions); 83 Ill. Admin.

[1] His responses ignore the primary argument in favor of dismissal: the statutory provisions cited in the Complaint either are outside the Commission's jurisdiction or, with regard to the Public Utilities Act provisions, cannot give rise to a claim against Ameritech Illinois.

Code § 711.10(b). In response, Dr. Paniotte argues that the wiring in question was actually located on the exterior of his building (see Resp. at 2; Supp. Resp. at 1), implying that it thus is regulated. What distinguishes regulated network cable from unregulated "inside wire" is not whether the wiring in question is located outdoors, but whether it is on the company's side of the Network Interface Device ("NID"). See Third Interim Order, Ill. C.C. Dkt. 86-0278, pp. 5-6 (Sept. 30, 1987) (Am. Ill. Mot., Appendix 2). The defective wiring here was located on Dr. Paniotte's side of the NID (see Jennrich Aff. ¶¶ 4-6) and thus involves "services no longer regulated by the Commission." Grigas v. Illinois Bell Telephone Co., Ill. C.C. Dkt. 90-0302 at *2 (1991) (Am. Ill. Mot., Appendix 3). In addition, following Grigas and 83 Ill. Admin. Code § 711.10(b), maintenance of inside wire should not be viewed as a "telecommunications service" that the Commission regulates under § 13-203 of the Public Utility Act, 220 ILCS 5/13-203.

Dr. Paniotte also suggests that his claim is not moot because Ameritech Illinois did not accede to his settlement demands. See Resp. at 4. The mootness of a party's claims, however, is determined by the relief that party requests in its Complaint and by the scope of the Commission's authority – not by the size of its settlement demand. The Complaint requests only that the Commission "enforce the Consumer Protection Laws." Complaint, p. 2. As explained in Ameritech Illinois' motion, the Commission does not have jurisdiction over claims brought under the Consumer Fraud Act and the Deceptive Trade Practices Act (see Am. Ill. Mot. at 4, 7), so it does not have the ability to provide the relief sought. Moreover, Ameritech Illinois restored Dr. Paniotte's service and has credited his account for the $85.98 that was in dispute. See DeHaai Aff. ¶¶ 6-7. He thus

has received all the relief that the Commission could provide here. See Woods v. Illinois Bell Telephone Co, Ill. C.C. Dkt. 01-0127 (2001) (attached hereto) (dismissing complaint as moot). The Commission simply has no authority to award damages for pain and suffering, which appears to be the basis for the $2,000 per day that Dr. Paniotte demanded to settle the case. See Supp. Resp. at 3.

II. Dr. Paniotte's Factual Arguments Are Irrelevant.

Most of Dr. Paniotte's two submissions discuss the factual background of numerous subjects relating to the history of his service with Ameritech Illinois. These subjects range from repairs made to his service prior to the events giving rise to the Complaint (see Resp. at 2), to his entreaties to the Governor's office regarding the dispute (see Supp. Resp. at 3), to apology letters he received from collection agencies after the Complaint was filed. See Resp. at 3.[2] Many of these subjects are not even mentioned in the Complaint and thus cannot be considered in evaluating the motion to dismiss. Cf. Connick v. Suzuki Motor Co., Ltd., 275 Ill. App. 3d 705, 711, 656 N.E.2d 170, 176 (1st Dist. 1995) (stating that motion to dismiss should be decided solely on allegations set forth in complaint).

In addition, the factual issues that Dr. Paniotte raises have no bearing on the legal arguments on which the motion to dismiss is based. For example, whether he used an appropriate address to mail a payment to Ameritech Illinois or whether he mailed the

[2] Although Dr. Paniotte's Response suggests that it includes copies of these letters (Resp. at 3), they were not attached to the brief that Ameritech Illinois received. Similarly, although the Supplemental Response states that it includes a May 18, 2001, letter Dr. Paniotte sent to Ameritech Illinois (Supp. Resp. at 3), the letter also was not attached to the brief Ameritech Illinois received.

same check multiple times are questions that are irrelevant to determining whether the statutory claims he asserts are within the Commission's jurisdiction. In any event, if the matter proceeded to hearing, Ameritech Illinois could rebut any potentially relevant factual assertions.[3] Accordingly, the Commission need not consider them in deciding the motion to dismiss.

A final reason not to consider any new factual information in Dr. Paniotte's two responses is his failure to verify this information. The Commission's rules of practice require that matters relevant to a motion, which are not of record in the proceeding, be supported by affidavit. See 83 Ill. Admin. Code §200.190(e).

III. Dr. Paniotte Has No Entitlement to Injunctive Relief.

Dr. Paniotte's Response also raises the issue of injunctive relief (Resp. at 3-4), referencing § 3 of the Deceptive Trade Practices Act ("DTPA"), 815 ILCS 510/3. The issue of injunctive relief has no bearing on the motion to dismiss for four reasons.

First, the Complaint does not request an injunction, so that Dr. Paniotte's request for such relief in his response is untimely and irrelevant to the motion to dismiss. Second, as Ameritech Illinois discussed in its opening brief (at p. 4), the Commission lacks jurisdiction to consider claims under the DPTA, and thus the ability of a "court" to grant relief under the Act is beside the point. Third, the Commission has only limited powers and lacks the authority to issue an injunction. See 220 ILCS 5/4-202 (stating that

[3] For example, Ameritech Illinois would be able to rebut Dr. Paniotte's statement that his service was disconnected without prior warning (Supp. Resp. at 3) and that he was told he would not be charged for the repair visit. Id. at 1.

the Commission must file action in circuit court to obtain injunction); State Public Utilities Comm'n ex rel. Evansville Tel. Co. v. Okaw Valley Mut. Tel. Ass'n, 282 Ill. 336, 118 N.E. 760 (1918). Finally, even if the Commission had jurisdiction over such claims and could issue an injunction (and even if the Complaint were amended to seek such relief[4]), this case would not meet an essential criterion for injunctive relief. Section 3 of the DTPA allows a person "likely to be damaged by a deceptive trade practice" to obtain an injunction. 815 ILCS 510/3. Dr. Paniotte is not "likely" to be deceived by Ameritech Illinois because the deceptive conduct of which he complains – allegedly being told that he would not be charged for a repair visit – occurred more than a year ago and thus cannot now be enjoined. See Tarrin v. Pellonari, 253 Ill. App. 3d 542, 553, 625 N.E.2d 739, 747 (1st Dist. 1993) (holding that plaintiff must establish he is likely to be damaged in the future by defendant's conduct).

# # #

[4] Dr. Paniotte raises the possibility of amendment in a postscript to his Response. See Resp. at 4.

CONCLUSION

THEREFORE, for all of the foregoing reasons and for the reasons stated in Ameritech Illinois' Verified Motion, the Complaint should be dismissed.

Respectfully submitted,

_____

Mark A. Kerber
James A. Huttenhower
Illinois Bell Telephone Company
225 W. Randolph Street, Suite 25-D
Chicago, Illinois 60606
312-727-7140
312-727-1444